IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 17TH MARCH 2006 / 26TH PHALGUNA, 1927

MFA.No. 1155 of 2001()

OPMV.1432/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM

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APPELLANT:

CHANDRA MOHAN,
S/O.RAGHAVAN,
KAMBIKKAKOM COLONY,
NO.30, ASRAMAM, KOLLA-2.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENTS:

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1. V.S.SAJEEV, S/O.VELAYUDHAN PILLAI,
LEKSHMI NIVAS, LEKSHMI NADA,
KOLLAM-13.

2. V.S.SYAMKUMAR, S/O.VELAYUDHAN PILLAI, DO. DO.

3. M/S.ORIENTAL INSURANCE CO.LTD.,
BRANCH OFFICE, U.P.VIII, 233,
SAINT MARY VILLA, ULLOOR.P.O.,
THIRUVANANTHAPURAM-11.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
SRI.V.VENUGOPALAN NAIR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17.3.2006, THE COURT ON 17/03/2006 DELIVERED THE FOLLOWING:

K.HEMA, J.

M.F.A.NO.1155 of 2001

Dated this the 17th day of March, 2006

JUDGMENT

Appellant is the claimant who filed an application under Section 166 of the Motor Vehicles Act seeking compensation for the injuries sustained by him in a motor accident. According to the appellant, a motor cycle bearing No. KL-2/A 873 came in a rash and negligent manner and hit against him, while he was walking through the southern side of a public road from east to west. To prove his case, he examined himself as PW1 and also another alleged eye witness as PW2. He also marked documents relating to the criminal case and also medical certificates which are marked as Exhibits A1 to A9. The respondents denied the involvement of the alleged motor cycle in the accident and examined Rws 1 and 2 and marked Exhibit B1 on their side.

2. The Tribunal, after analyzing the evidence in detail, found that the appellant failed to establish that the vehicle involved in the accident was KL-2/A 873 motor cycle which was driven by the second respondent. Hence the claim petition was dismissed.

3. The appellant challenges the dismissal of his application. It is contended that the Tribunal did not appreciate the evidence properly and according to learned counsel for the appellant, the records relating to the criminal case were more than enough to establish that the case was registered against the second respondent as the driver of the motor cycle bearing No. KL-2/A 873 and that the said vehicle was involved in the accident. Exhibits A1 to A5 are the documents relating to the police case. Exhibit A5 is the charge sheet wherein the second respondent was shown to be the driver who was responsible for causing the accident by rash and negligent driving on his part. The vehicle involved in the case is also shown as KL-2/A 873 motor cycle, as alleged by the appellant.

4. But, it is needless to say that merely based on the police records, no conclusion can be arrived at either in favour of the appellant or otherwise. When a contention is raised that a false claim is made against the driver and owner of a particular vehicle, and that the vehicle which is actually involved in the accident is not covered by an insurance policy etc., the Tribunal has to be more careful in assessing the evidence. The Tribunal has only discharged its functions forcibly by analysing the evidence in the right

perspective to hold detail and holding that the vehicle involved in this case is not the motor cycle as contended by the appellant.

5. The evidence of PW1, the claimant will show that the original case set up by him was that he was hit by a "scooter" which was bearing a particular number. In the F.I.R itself PW1 stated that he was hit by "scooter bearing No.KLU 3271". The F.I.R. is Exhibit A1. PW1 is an autorikshaw driver who, according to his own version, can distinguish between a "scooter" and a "motor cycle". It is also relevant to note that the accident occurred on 6.1.1992 and the details of the scooter was given in the first information statement after three days of the accident on 9.1.1992. The appellant had sufficient time to make enquiries to find out the correct number of the vehicle involved and the nature of the vehicle. It is also relevant to note that the accident occurred in the broad day light at 3.30 p.m. on a public road. The appellant had absolutely no explanation for the discrepancy in the number and the nature of vehicle involved in the accident as stated by himself in the first information statement.

6. The evidence of PW2, an alleged eye witness also supports the case of the appellant. He had also stated in the chief

examination itself that he is an auto driver and that the accident occurred due to the negligence of the driver of the "scooter". He also gave the number of the scooter as KL-2/A 873. He also deposed in cross-examination that he can distinguish between a scooter and a motor cycle. He also admitted that he had told the police that it was a scooter which was involved in the accident. The reference of "scooter" in the chief examination, in the statement given by him to the police etc. also have to be taken into account while appreciating the evidence.

7. According to PW2, PW1 was standing by the side of the road whereas as per evidence of PW1, he was walking along the road while the scooter came from behind and hit him. Taking into consideration the above facts revealed from the evidence of Pws 1 and 2 itself it is not possible to conclude that the vehicle involved is a "motor cycle" bearing registration No. KL-2/A 873 especially since no acceptable explanation is forthcoming for the discrepancy pointed out in the first information statement given by the claimant before the police regarding the accident, that too after 3 days of the accident.

8. Now coming to the evidence relating to the police case, I find that of RW2, Sub Inspector who conducted the investigation could not state whether a scooter bearing registration No.KRU 3271 was involved in the accident or not. He could not deny the suggestion that the vehicle involved in the accident is the said scooter, in spite of the investigation. Of course, he has also stated that the vehicle involved is a motor cycle bearing No. KL-2/A 873. But in the light of his inability to deny the suggestion that the vehicle involved is a scooter bearing No.KRU 3271, as stated in the first information statement, the details to the contrary noted in the charge sheet, scene mahazar etc. are of no consequence. The appellant has, as rightly held by the Tribunal, failed to establish that he sustained injury in an accident involving “motor cycle” bearing No.KL-2/A 873 which was driven by the second respondent. The appeal fails and is dismissed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

M.F.A.NO.1155 OF 2001

JUDGMENT

17.3.2006